# WESTERN LAW JOURNAL.

SEPTEMBER, 1848.

## NOTES ON THE ORDINANCE OF 1787.

[There probably has never been a time, since the enactment of this Ordinance, when it occupied so much of the public attention as at the present moment. The following article, from the pen of the thoroughly informed and very accurate PETER FORCE, of Washington, appeared in the National Intelligencer of August 6th, 1847. We do not know how we could more usefully occupy our pages than by publishing the whole of it. Believing these "Notes" to contain the exact truth in relation to one of the most important events in our legislative history, we commend them to the thoughtful attention of all our readers. EDS.]

IN the History of the Ordinance of 1787, published in the National Intelligencer on the 6th of the present month, there are several errors, which, before they become "fixed facts," should be corrected. These Notes furnish materials for the correction of some of them.

On the 1st of March, 1784, a Committee, consisting of Mr. Jefferson, of Virginia, Mr. Chase, of Maryland, and Mr. Howell, of Rhode Island, submitted to Congress the following Plan for the temporary government of the Western Territory:

The Committee appointed to prepare a plan for the temporary government of the Western Territory, have agreed to the following resolutions:

*Resolved*, That the territory ceded or to be ceded by individual States to the United States, whensoever the same shall have been purchased of the Indian inhabitants, and offered for sale by the United States, shall be formed into additional States, bounded in the following manner, as nearly as such cessions will admit—that is to say, northwardly and southwardly by parallels of latitude, so that each State shall comprehend, from south to north, two degrees of

latitude, beginning to count from the completion of thirty-one degrees north of the equator; but any territory northwardly of the forty-seventh degree shall make part of the State next below. And eastwardly and westwardly they shall be bounded, those on the Mississippi by that river on the one side, and the meridian of the lowest point of the rapids of the Ohio on the other; and those adjoining on the east, by the same meridian on their western side, and on the eastern by the meridian of the western cape of the mouth of the great Kanawha. And the territory eastward of this last meridian, between the Ohio, Lake Erie, and Pennsylvania, shall be one State.

That the settlers within the territory so to be purchased and offered for sale, shall, either on their own petition or on the order of Congress, receive authority from them, with appointments of time and place, for their free males of full age to meet together for the purpose of establishing a temporary government to adopt the Constitution and laws of any one of these States, so that such laws nevertheless shall be subject to alteration by their ordinary legislature, and to erect, subject to a like alteration, counties or townships for the election of members for their Legislature.

That such temporary government shall only continue in force in any State until it shall have acquired twenty thousand free inhabitants—when, giving due proof thereof to Congress, they shall receive from them authority, with appointments of time and place, to call a convention of representatives to establish a permanent constitution and government for themselves.

*Provided*, That both the temporary and permanent governments be established on these principles as their basis:

1. That they shall forever remain a part of the United States of America.

2. That in their persons, property, and territory, they shall be subject to the government of the United States in Congress assembled, and to the Articles of Confederation in all those cases in which the original States shall be so subject.

3. That they shall be subject to pay a part of the federal debts, contracted or to be contracted, to be apportioned on them by Congress according to the same common rule and measure by which apportionments thereof shall be made on the other States.

4. That their respective governments shall be in republican forms, and shall admit no person to be a citizen who holds any hereditary title.

5. That after the year 1800 of the Christian era, there shall be neither slavery nor involuntary servitude in any of the said States, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted to have been personally guilty.

That whensoever any of the said States shall have, of free inhabitants, as many as shall then be in any one of the least numerous of the thirteen original States, such State shall be admitted by its Delegates into the Congress of the United States on an equal footing

with the said original States, after which the assent of two thirds of the United States, in Congress assembled, shall be requisite in all those cases wherein, by the confederation, the assent of nine States is now required, provided the consent of nine States to such admission may be obtained according to the eleventh of the Articles of Confederation. Until such admission by their delegates into Congress, any of the said States, after the establishment of their temporary government, shall have authority to keep a sitting member in Congress, with a right of debating, but not of voting.

That the territory northward of the forty-fifth degree, that is to say, of the completion of forty-five degrees from the equator, and extending to the Lake of the Woods, shall be called *Sylvania;* that of the territory under the forty-fifth and forty-fourth degrees, that which lies westward of Michigan, shall be called *Michigania;* and that which is eastward thereof, within the peninsula formed by the lakes and waters of Michigan, Huron, S. Clair, and Erie, shall be called *Cheronesus*, and shall include any part of the peninsula which may extend above the forty-fifth degree. Of the territory under the forty-third and forty-second degrees, that to the westward, through which the Assenisipi or Rock river runs, shall be called *Assenisipia;* and that to the eastward, in which are the fountains of the Muskingum, the two Miamies of Ohio, the Wabash, the Illinois, the Miami of the Lake, and the Sandusky rivers, shall be called *Metropotamia.* Of the territory which lies under the forty-first and fortieth degrees, the western, through which the river Illinois runs, shall be called *Illinoia;* that next adjoining, to the eastward, *Saratoga;* and that between this last and Pennsylvania, and extending from the Ohio to Lake Erie, shall be called *Washington.* Of the territory which lies under the thirty-ninth and thirty-eighth degrees, to which shall be added so much of the point of land within the fork of the Ohio and Mississippi as lies under the thirty-seventh degree, that to the westward, within and adjacent to which are the confluences of the rivers Wabash, Shawnee, Tanisee, Ohio, Illinois, Mississippi, and Missouri, shall be called *Polypotamia;* and that to the eastward, farther up the Ohio, otherwise called the Pelisipi, shall be called *Pelisipia.*

That all the preceding articles shall be formed into a charter of compact, shall be duly executed by the President of the United States, in Congress assembled, under his hand and the seal of the United States, shall be promulgated, and shall stand as fundamental conditions between the thirteen original States, and these newly described, unalterable but by the joint consent of the United States, in Congress assembled, and of the particular State within which such alteration is proposed to be made.

This Report was recommitted to the same Committee on the 17th of March, and a new one was submitted on the 22d of the same month. The second Report agreed in substance with the first. The principal difference was the omission of the paragraph giving

names to the States to be formed out of the Western Territory. It was taken up for consideration by Congress on the 19th of April, on which day, on the motion of Mr. Spaight, of North Carolina, the following clause was struck out:

"That, after the year 1800 of the Christian era, there shall be neither slavery nor involuntary servitude in any of the said States, otherwise than in the punishment of crimes whereof the party shall have been duly convicted to have been personally guilty."

The Report was further considered and amended on the 20th and 21st. On the 23d it was agreed to, (ten States voting *aye*, and one *no*,) without the clause prohibiting slavery and involuntary servitude after the year 1800. On the question to agree to the Report, after the prohibitory clause was struck out, the yeas and nays were required by Mr. Beresford. The vote was:

| | | | |
|---|---|---|---|
| *N. Hampshire*, | Mr. Foster, aye. | *Pennsylvania*, | Mr. Mifflin, aye. |
| | Mr. Blanchard, aye. | | Mr. Montgomery, aye. |
| *Massachusetts*, | Mr. Gerry, aye. | | Mr. Hand, aye. |
| | Mr. Partridge, aye. | *Maryland*, | Mr. Stone, aye. |
| *Rhode Island*, | Mr. Ellery, aye. | | Mr. Chase, aye. |
| | Mr. Howell, aye. | *Virginia*, | Mr. Jefferson, aye. |
| *Connecticut*, | Mr. Sherman, aye. | | Mr. Mercer, aye. |
| | Mr. Wadsworth, aye. | | Mr. Monroe, aye. |
| *New York*, | Mr. Dewitt, aye. | *North Carolina*, | Mr. Williams, aye. |
| | Mr. Paine, aye. | | Mr. Spaight, aye. |
| *New Jersey*, | Mr. Beatty, aye. | *South Carolina*, | Mr. Reed, no. |
| | Mr. Dick, aye. | | Mr. Beresford, no. |
| *Delaware*, | (absent.) | *Georgia*, | (absent.) |

Thus the Report of Mr. Jefferson for the temporary government of the Western Territory, without any restriction whatever as to slavery, received the vote of every State present except South Carolina. It did not "lay on the table of Congress during the three years from 1784 to 1787." During these three years it was the law of the land. It was repealed in 1787.

Nearly a year after the first plan was adopted, the clause originally offered by Mr. Jefferson, as a part of the *charter of compact and fundamental Constitutions* between the thirteen original States, and the new States to be formed in the Western Territory, prohibiting slavery and involuntary servitude, was again submitted to Congress, omitting the time named—"after the year 1800 of the Christian era."

On the 16th of March, 1785,—

"A motion was made by Mr. King, seconded by Mr. Ellery, that the following proposition be committed:

"That there shall be neither slavery nor involuntary servitude in any of the States described in the resolve of Congress of the 23d of April, 1784, otherwise than in the punishment of crimes, whereof the party shall have been personally guilty; and that this regulation shall be an article of compact, and remain a fundamental principle of the Constitutions between the thirteen original States, and each of the States described in the said resolve of the 23d of April, 1784."

The motion was, "that the following proposition be committed"—that is, committed to a Committee of the Whole House: it was not "in the nature of an instruction to the Committee on the Western Territory." At that time there was no such Committee. It was a separate, independent proposition. The very terms of it show that it was offered as an addition to the resolve of April 23, 1784, with the intention of restoring to that resolve a clause that had originally formed a part of it.

Mr. King's motion to commit was agreed to—eight States, (New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, and Maryland, voted in the affirmative, and three States, (Virginia, North Carolina, and South Carolina,) in the negative. Neither Delaware nor Georgia was represented.

After the commitment of this proposition, it was neither called up in Congress, nor noticed by any of the Committees who subsequently reported plans for the government of the Western Territory.

The subject was not laid over from this time till September, 1786. It is noticed as being before Congress on the 24th of March, the 10th of May, the 13th of July, and the 24th of August, of that year.

On the 24th of March, 1786, a Report was made by the grand Committee of the House, to whom had been referred a motion of Mr. Monroe upon the subject of the Western Territory.

On the 10th of May, 1786, a Report was made by another Committee, consisting of Mr. Monroe, of Virginia, Mr. Johnson, of Connecticut, Mr. King, of Massachusetts, Mr. Kean, of South Carolina, and Mr. Pinckney, of South Carolina, to whom a motion of Mr. Dane, for considering and reporting the form of a temporary government for the Western Territory was referred. This Report, after amendment, was recommitted on the 13th of July following.

On the 24th of August, 1786, the Secretary of Congress was directed to inform the inhabitants of Kaskaskias "that Congress

have under their consideration the plan of a temporary government of the said District, and that its adoption will be no longer protracted than the importance of the subject and a due regard to their interest may require."

On the 19th of September, 1786, a Committee, consisting of Mr. Johnson, of Connecticut, Mr. Pinckney, of South Carolina, Mr. Smith, of New York, Mr. Dane, of Massachusetts, and Mr. Henry, of Maryland, appointed to propose a "plan of temporary government for such Districts or new States as shall be laid out by the United States upon the principles of the acts of cession from individual States, and admitted into the Confederacy," made a Report, which was taken up for consideration on the 29th; and after some discussion and several motions to amend, the further consideration was postponed.

On the 26th of April, 1787, same Committee (Mr. Johnson, Mr. Pinckney, Mr. Smith, Mr. Dane, and Mr. Henry) reported "An Ordinance for the Government of the Western Territory." It was read a second time, and amended on the 9th of May, when the next day was assigned for the third reading. On the 10th, the order of the day for the third reading was called for by the State of Massachusetts, and was postponed. On the 9th and 10th of May, Massachusetts was represented by Mr. Gorham, Mr. King, and Mr. Dane. The proposition which, on Mr. King's motion, was "committed" on the 16th of March of the preceding year, was not in the Ordinance, as reported by the Committee, nor was any motion made in the Congress to insert it as an amendment.

The following is a copy of the Ordinance as amended and ordered to a third reading:

### An Ordinance for the Government of the Western Territory.

It is hereby ordained by the United States in Congress assembled, that there shall be appointed, from time to time, a Governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress.

There shall be appointed by Congress, from time to time, a Secretary, whose commission shall continue in force for four years, unless sooner revoked by Congress. It shall be his duty to keep and preserve the acts and laws passed by the General Assembly, and public records of the District, and of the proceedings of the Governor in his executive department, and transmit authentic copies of such acts and proceedings every six months to the Secretary of Congress.

There shall also be appointed a Court, to consist of three Judges, any two of whom shall form a Court, who shall have a common law jurisdiction, whose commissions shall continue in force during good behavior.

And, to secure the rights of personal liberty and property to the inhabitants and others, purchasers in the said Districts, it is hereby ordained that the inhabitants of said Districts shall always be entitled to the benefits of the act of *habeas corpus* and of the trial by jury.

The Governor and Judges, or a majority of them, shall adopt and publish in the Districts such laws of the original States, criminal and civil, as may be necessary and best suited to the circumstances of the District, and report them to Congress from time to time, which shall prevail in said District until the organization of the General Assembly, unless disapproved of by Congress; but afterwards the General Assembly shall have authority to alter them as they think fit: provided, however, that said Assembly shall have no power to create perpetuities.

The Governor for the time being shall be Gommander-in-chief of the militia, and appoint and commission all officers in the same below the rank of general officers: all officers of that rank shall be appointed and commissioned by Congress.

Previous to the organization of the General Assembly, the Governor shall appoint such magistrates and other civil officers in each county or township as he shall find necessary for the preservation of peace and good order in the same. After the General Assembly shall be organized, the powers and duties of magistrates and other civil officers shall be regulated and defined by the said Assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the Governor.

The Governor shall, as soon as may be, proceed to lay out the District into counties and townships, subject, however, to such alterations as may thereafter be made by the Legislature, so soon as there shall be five thousand free male inhabitants, of full age, within the said District. Upon giving due proof thereof to the Governor, they shall receive authority, with time and place, to elect representatives from their counties or townships as aforesaid, to represent them in General Assembly: provided, that for every five hundred free male inhabitants, there shall be one representative, and so on progressively with the number of free male inhabitants shall the right of representation increase, until the number of representatives amount to twenty-five; after which the number and proportion of representatives shall be regulated by the Legislature: provided, that no person shall be eligible or qualified to act as a representative, unless he be a citizen of one of the United States, or have resided within such District three years, and shall likewise hold, in his own right, in fee simple, two hundred acres of land

within the same: provided, also, that a freehold or life estate in fifty acres of land in the said District, if a citizen of any of the United States, and two years' residence if a foreigner, in addition, shall be necessary to qualify a man as elector for the said representative.

The representatives thus elected shall serve for the term of two years, and, in case of the death of a representative, or removal from office, the Governor shall issue a writ to the county or township for which he was a member, to elect another in his stead, to serve for the residue of the time.

The General Assembly shall consist of the Governor, a Legislative Council, to consist of five members, to be appointed by the United States in Congress assembled, to continue in office during pleasure, any three of whom to be a quorum; and a House of Representatives, who shall have a legislative authority complete in all cases for the good government of said district: provided, that no act of the said General Assembly shall be construed to affect any lands the property of the United States: and provided, further, that the lands of the non-resident proprietors shall in no instance be taxed higher than the lands of residents.

All bills shall originate indifferently either in the Council or House of Representatives, and, having been passed by a majority in both Houses, shall be referred to the Governor for his assent, after obtaining which they shall be complete and valid; but no bill or legislative act whatever shall be valid or of any force without his assent.

The Governor shall have power to convene, prorogue, and dissolve the General Assembly when in his opinion it shall be expedient.

The said inhabitants or settlers shall be subject to pay a part of the Federal debts, contracted or to be contracted, and to bear a proportional part of the burdens of the Government, to be apportioned on them by Congress, according to the same common rule and measure by which apportionments thereof shall be made on the other States.

The Governor, Judges, Legislative Council, Secretary, and such other officers as Congress shall at any time think proper to appoint in such district, shall take an oath or affirmation of fidelity; the Governor before the President of Congress, and all other officers before the Governor, prescribed on the 17th day of January, 1785, to the Secretary at War, *mutatis mutandis*.

Whensoever any of the said States shall have of free inhabitants as many as are equal in number to the one-thirteenth part of the citizens of the original States, to be computed from the last enumeration, such State shall be admitted by its delegates into the Congress of the United States, on an equal footing with the said original States; provided the consent of so many States in Congress is first obtained as may at that time be competent to such admission.

*Resolved*, That the resolutions of the 23d of April, 1784, be and the same are hereby annulled and repealed.

Such was the ordinance for the government of the Western Territory, when it was ordered to a third reading on the 10th of May, 1787. It had then made no further progress in the development of those great principles for which it has since been distinguished as "one of the greatest monuments of civil jurisprudence." It made no provision for the equal distribution of estates. It said nothing of extending the fundamental principles of civil and religious liberty—nothing of the rights of conscience, knowledge, or education. It did not contain the articles of compact, which were to remain unaltered forever, unless by common consent.

We now come to the time when these great principles were first brought forward.

On the 9th of July, 1787, the ordinance was again referred. The committee now consisted of Mr. Carrington, of Virginia, Mr. Dane of Massachusetts, Mr. R. H. Lee, of Virginia, Mr. Kean, of South Carolina, and Mr. Smith of New York. Mr. Carrington, Mr. Lee and Mr. Kean, the new members, were a majority.

This committee did not "merely revise the ordinance;" they prepared and reported the great Bill of Rights for the territory northwest of the Ohio.

The question is here presented, why was Mr. Carrington, a new member of the committee, placed at the head of it, to the exclusion of Mr. Dane and Mr. Smith, who had served previously? In the absence of positive evidence, there appears to be but one answer to this question. The opinions of all the members were known in Congress. In the course of debate new views had been presented, which must have been received with general approbation. A majority of the committee were the advocates of these views, and the member by whom they were presented to the House was selected as the chairman. There is nothing improbable or out of the usual course of proceeding in this. Indeed the prompt action of the committee and of the Congress goes very far to confirm it.

On the 11th of July, (two days after the reference,) Mr. Carrington reported the ordinance for the government of the territory of the United States northwest of the river Ohio. This ordinance was read a second time on the 12th, (and, amended, as stated below;) and on the 13th it was read a third time, and passed by the unanimous vote of the eight States present in the Congress.

On the passage, the yeas and nays (being required by Mr. Yates) were as follows:

| | | | |
|---|---|---|---|
| *N. Hampshire*, | (Absent) | *Maryland*, | (Absent.) |
| *Massachusetts*, | Mr. Holten, aye. | *Virginia*, | Mr. Grayson, aye. |
| | Mr. Dane, aye, | | Mr. R. H. Lee, aye. |
| *Rhode Island*, | (Absent.) | | Mr. Carrington, aye. |
| *Connecticut*, | (Absent.) | *N. Carolina*, | Mr. Blount, aye. |
| *New York*, | Mr. Smith, aye. | | Mr. Hawkins, aye. |
| | Mr. Haring, aye. | *S. Carolina*, | Mr. Kean, aye. |
| | Mr. Yates, aye. | | Mr. Huger, aye. |
| *New Jersey*, | Mr. Clarke, aye. | *Georgia*, | Mr. Few, aye. |
| | Mr. Schureman, aye. | | Mr. Pierce, aye. |
| *Delaware*, | Mr. Kearney, aye. | *Pennsylvania*, | (Absent.) |
| | Mr. Mitchell, aye. | | |

It appears, then, that, instead of having "this ordinance under deliberation and revision for three years and six months," in *five days* it was passed through all the forms of legislation—the reference, the action of the committee, the report, the three several readings, the discussion and amendment by Congress, and the final passage.

On the 12th of July, (as above stated,) Mr. Dane offered the following amendment, which was adopted as the sixth of the articles of the compact:

"*Article the Sixth.* There shall be neither slavery nor involuntary servitude in the said Territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted: *provided, always*, that any person, escaping into the same, from whom labor or service is claimed in any of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service, as aforesaid."

This had, in part, been presented by Mr. Jefferson in 1784, and again by Mr. King in 1785. The assertion that this clause, "as it now exists in the Ordinance," was "proposed and carried by Mr. King, when neither Jefferson nor Dane was present," is singularly incorrect. In the proposition submitted by Mr. King in 1785, (which was never afterwards called up in Congress,) there was no provision for reclaiming fugitives; and without such a provision, it could not have been carried at all: besides, the clause, "as it now exists in the Ordinance," was proposed by Mr. Dane on the 12th of July, 1787, and carried by the unanimous vote of Congress when Mr. King was not present.

Mr. King was a member of the Convention for framing the Federal Constitution. He was present and voted in the Convention on the 12th of July, 1787. The whole of that day was occupied in

settling the proportion of representation and direct taxation, which was then determined as it now stands in the Constitution, viz.: "by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians, not taxed, *three fifths of all other persons.*"

The Congress and the Convention were both in session at the same time in Philadelphia. There was of course free intercourse and interchange of opinion between the members of the two bodies. To this may be attributed the adoption on the same day of the clause in the Ordinance and the clause in the Constitution.

The accompanying copy of the Ordinance shows the amendments made in Congress on the 12th of July to Mr. Carrington's Report of the 11th. All that was struck out is printed in [*italic*,] what was inserted is in SMALL CAPITALS. The reader, on comparing this with the plans previously reported by Mr. Jefferson and by Mr. Johnson, will see that most of the principles "on which its wisdom and fame rest," were first presented by Mr. Carrington.

AN ORDINANCE FOR THE GOVERNMENT OF THE TERRITORY OF THE UNITED STATES, NORTH WEST OF THE RIVER OHIO.

*Be it ordained by the United States in Congress assembled*, That the said Territory, for the purposes of temporary government, be one District; subject, however, to be divided into two Districts, as future circumstances may, in the opinion of Congress, make it expedient.

*Be it ordained by the authority aforesaid*, That the estates both of resident and non-resident proprietors in the said Territory, dying intestate, shall descend to and be distributed among their children and the descendants of a deceased child in equal parts; the descendants of a deceased child or grand-child to take the share of their deceased parent in equal parts among them; and where there shall be no children or descendants, then in equal parts to the next of kin, in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate shall have in equal parts among them their deceased parent's share; AND THERE SHALL IN NO CASE BE A DISTINCTION BETWEEN KINDRED OF THE WHOLE AND HALF BLOOD; saving in all cases to the widow of the intestate her third part of the real estate for life, and [*where there shall be no children of the intestate*] one third part of the personal estate; and this law relative to descents and dower shall remain in full force until altered by the Legislature of the District. And until the Governor and Judges shall adopt laws as hereinafter mentioned, estates in the said Territory may be devised or bequeathed by wills in writing, signed and sealed by him or her in whom the estate may be, (being of full age,) and attested by three witnesses; and real estates may be con-

veyed by lease and release, or bargain and sale, signed, sealed, and delivered by the person, being of full age, in whom the estate may be, and attested by two witnesses, provided such wills be duly proved, and such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after proper magistrates, Courts, and Registers shall be appointed for that purpose; and personal property may be transferred by delivery, saving, however, to the [*inhabitants of Kaskaskies and Post Vincent*] FRENCH AND CANADIAN INHABITANTS, AND OTHER SETTLERS OF THE KASKASKIES, ST. VINCENT'S, AND THE NEIGHBORING VILLAGES, WHO HAVE HERETOFORE PROFESSED THEMSELVES CITIZENS OF VIRGINIA, their laws and customs now in force among them relative to the descent and conveyance of property.

*Be it ordained by the authority aforesaid*, That there shall be appointed, from time to time by Congress, a Governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress: he shall reside in the District, and have a freehold estate therein, in one thousand acres of land, while in the exercise of his office.

There shall be appointed from time to time, by Congress, a Secretary, whose commission shall continue in force for four years, unless sooner revoked; he shall reside in the District, and have a freehold estate therein, in five hundred acres of land, while in the exercise of his office. It shall be his duty to keep and preserve the acts and laws passed by the Legislature, and the public records of the District, of the proceedings of the Governor in his executive department, and transmit authentic copies of such acts and proceedings every six months to the Secretary of Congress.

There shall also be appointed a Court, to consist of three Judges, any two of whom to form a Court, who shall have a common law jurisdiction, and reside in the District, and have each therein a freehold estate in five hundred acres of land, while in the exercise of their offices; and their commissions shall continue in force during good behavior.

The Governor and Judges, or a majority of them, shall adopt and publish in the District such laws of the original States, criminal and civil, as may be necessary and best suited to the circumstances of the District, and report them to Congress from time to time, which laws shall be in force in the District until the organization of the General Assembly therein, unless disapproved of by Congress; but afterwards the Legislature shall have authority to alter them as they shall think fit.

The Governor for the time being shall be Commander-in-chief of the militia, and appoint and commission all officers in the same below the rank of general officers: all GENERAL officers [*above that rank*] shall be appointed and commissioned by Congress.

Previous to the organization of the General Assembly, the Governor shall appoint such magistrates and other civil officers in each county or township as he shall find necessary for the preservation

of the peace and good order in the same. After the General Assembly shall be organized, the powers and duties of magistrates and other civil officers shall be regulated and defined by the said Assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the Governor.

For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of the District, and for the execution of process, criminal and civil, the Governor shall make proper divisions thereof; and he shall proceed from time to time, as circumstances may require, to lay out the parts of the District in which the Indian titles shall have been extinguished into counties and townships, subject, however, to such alterations as may thereafter be made by the Legislature.

So soon as there shall be five thousand free male inhabitants, of full age, in the District, upon giving proof thereof to the Governor, they shall receive authority, with time and place, to elect Representatives from their counties or townships, to represent them in the General Assembly, provided that, for every five hundred free male inhabitants, there shall be one Representative, and so on progressively with the number of free male inhabitants shall the right of representation increase, until the number of Representatives shall amount to twenty-five; after which the number and proportion of Representatives shall be regulated by the Legislature: provided, that no person shall be eligible or qualified to act as a Representative, unless he shall have been a citizen of one of the United States three years, and be a resident in the District, or unless he shall have resided in the district three years, and in either case shall likewise hold in his own right, in fee simple, two hundred acres of land within the same: provided also, that a freehold in fifty acres of land in the District, having been a citizen of one of the States, and being resident in the District, or the like freehold and two years' residence in the District, shall be necessary to qualify a man as an elector of a Representative.

The representatives thus elected shall serve for the term of two years, and, in case of the death of the representative, or removal from office, the Governor shall issue a writ to the county or township for which he was a member, to elect another in his stead, to serve for the residue of the term.

The General Assembly, or Legislature, shall consist of the Governor, Legislative Council, and a House of Representatives. The Legislative Council shall consist of five members, to continue in office five years, unless sooner removed by Congress, any three of whom to be a quorum, and the members of the Council shall be nominated and appointed in the following manner, to wit: As soon as Representatives shall be elected, the Governor shall appoint a time and place for them to meet together, and when met, they shall nominate ten persons, residents in the District, and each possessed of a freehold in five hundred acres of land, and return their names to Congress; five of

whom Congress shall appoint and commission to serve as aforesaid; and whenever a vacancy shall happen in the Council, by death or removal from office, the House of Representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to Congress: one of whom Congress shall appoint and commission for the residue of the term; and every five years, four months at least before the expiration of the time of service of the members of Council, the said House shall nominate ten persons, qualified as aforesaid, and return their names to Congress, five of whom Congress shall appoint and commission to serve as members of the Council five years, unless sooner removed. And the Governor, Legislative Council, and House of Representatives, shall have authority to make laws in all cases for the good government of the District, not repugnant to the principles and articles in this Ordinance established and declared. And all bills having passed by a majority in the House, and by a majority in the Council, shall be referred to the Governor for his assent; but no bill or legislative act whatever shall be of any force without his assent. The Governor shall have power to convene, prorogue, and dissolve the General Assembly, when in his opinion it shall be expedient.

The Governor, Judges, Legislative Council, Secretary, and such other officers as Congress shall appoint in the District, shall take an oath or affirmation of fidelity and of office; the Governor before the President of Congress, and all other officers before the Governor. As soon as a Legislature shall be formed in the District, the Council and House, assembled in one room, shall have authority by joint ballot to elect a delegate to Congress, who shall have a seat in Congress, with a right of debating, but not of voting during, this temporary Government.

And for extending [*to all parts of the Confederacy*] the fundamental principles of civil and religious liberty, which form the basis whereon these Republics, their laws and constitutions are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said territory; to provide also for the establishment of States, and permanent government therein, and for their admission to a share in the Federal Councils on an equal footing with the original States, at as early periods as may be consistent with the general interest:

*It is hereby ordained and declared by the authority aforesaid*, That the following articles shall be considered as articles of compact between the original States and the People and States in the said territory, and forever remain unalterable, unless by common consent, to wit:

*Article the First.* No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments in the said territory.

*Article the Second.* The inhabitants of the said territory shall always be entitled to the benefits of the writ of habeas corpus and of the trial by jury; of a proportionate representation of the peo-

ple in the Legislature, and of judicial proceedings according to the course of the common law; all persons shall be bailable unless for capital offences, where the proof shall be evident or the presumption great; all fines shall be moderate, and no cruel or unusual punishments shall be inflicted; no man shall be deprived of his liberty or property but by the judgment of his peers, or the law of the land; and should the public exigencies make it necessary for the common preservation to take any person's property, or to demand his particular services, full compensation shall be made for the same; and, in the just preservation of rights and property, it is understood and declared that no law ought ever to be made or have force in the said territory that shall in any manner whatever interfere with or affect private contracts or engagements, bona fide and without fraud previously formed.

*Article the Third.* [*Institutions for the promotion of*] religion [and] morality, AND KNOWLEDGE, BEING NECESSARY TO GOOD GOVERNMENT AND THE HAPPINESS OF MANKIND, schools and the means of education shall forever be encouraged, [*and all persons while young shall be taught some useful occupation.*] The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

*Article the Fourth.* The said territory and the States which may be formed therein, shall forever remain a part of this Confederacy of the United States of America, subject to the articles of Confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in Congress assembled, conformable thereto. The inhabitants and settlers in the said territory shall be subject to pay a part of the Federal debts, contracted or to be contracted, and a proportional part of the expenses of Government, to be apportioned on them by Congress, according to the same common rule and measure by which apportionments thereof shall be made on the other States; and the taxes for paying their proportion shall be laid and levied by the authority and direction of the Legislatures of the district or districts, or new States, as in the original States, within the time agreed upon by the United States in Congress assembled. The Legislatures of those districts, or new States, shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the bona fide purchasers. No tax shall be imposed on lands the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same shall be common highways, and foever free, as well to the inhabitants of the said territory as to

the citizens of the United States, and those of any other States that may be admitted into the confederacy, without any tax, impost, or duty therefor.

*Article the Fifth.* There shall be formed in the said territory not less than three nor more than five States; and the boundaries of the States, as soon as Virginia shall alter her act of cession and [*authorize*] CONSENT TO the same, shall become fixed and established as follows, to wit: The western State in THE said territory shall be bounded by the Mississippi, the Ohio, and Wabash rivers; a direct line drawn from the Wabash and Post Vincent's due north to the territorial line between the United States and Canada, and by THE said territorial line to the Lake of the Woods and Mississippi. The middle State shall be bounded by the said direct line, the Wabash from Post Vincent's to the Ohio; by the Ohio, by a direct line drawn due north from the mouth of the Great Miami to THE said territorial line, and by THE said territorial line. The eastern State shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: Provided, however, and it is further understood and declared, that the boundaries of these three States shall be subject so far to be altered, that if Congress shall hereafter find it expedient, they shall have authority to form one or two States in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan: and whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted by its delegates into the Congress of the United States, on an equal footing with the original States in all respects whatever; and shall be at liberty to form a permanent constitution and State government: Provided the constitution and government so to be formed shall be republican, and in conformity to the principles contained in these articles; and, so far as it can be consistent with the general interest of the Confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than sixty thousand.

*Article the Sixth.* THERE SHALL BE NEITHER SLAVERY NOR INVOLUNTARY SERVITUDE IN THE SAID TERRITORY, OTHERWISE THAN IN PUNISHMENT OF CRIMES WHEREOF THE PARTY SHALL HAVE BEEN DULY CONVICTED: PROVIDED ALWAYS, THAT ANY PERSON ESCAPING INTO THE SAME, FROM WHOM LABOR OR SERVICE IS LAWFULLY CLAIMED IN ANY ONE OF THE ORIGINAL STATES, SUCH FUGITIVE MAY BE LAWFULLY RECLAIMED AND CONVEYED TO THE PERSON CLAIMING HIS OR HER LABOR OR SERVICE AS AFORESAID.

*Be it ordained by the authority aforesaid*, That the resolutions of the 23d of April, 1784, RELATIVE TO THE SUBJECT OF THIS ORDINANCE, be and the same are hereby repealed and declared null and void.

Done by the United States in Congress assembled, the 13th day of July, in the year of our Lord 1787, and of their sovereignty and independence the 12th.

CHAS. THOMSON, *Sec'y.*

## SUPREME COURT OF ILLINOIS: DECEMBER TERM, 1847.

[Reported by Charles Gilman.]

### Thomas Manchester *et al.*, Plaintiffs in Error, *v.* Wm. McKee, Executor of Jesse McKee, deceased, Defendant in Error.

CREDITOR'S BILL.

It was alleged in a creditor's bill, to subject certain lands to execution, that two judgments had been recovered by the complainant against the debtor; that executions had been issued thereon, and that they had been returned unsatisfied, except for a small amount of each. The bill further alleged fraudulent transfers of the lands, for the purpose of hindering and delaying creditors, &c: *Held*, that the allegations of the bill entitled the complainant to file it.

A party against whom a bill has been taken for confessed, cannot complain and assign for error that the proof does not sustain the allegations of the bill.

Under the provisions of the 19th section of the Chancery Act, when a bill is taken for confessed, it is left to the discretion of the Court, whether any proof, shall be required in support of the bill, or what parts of the bill shall be supported by proof, and, of necessity, what shall be the amount, nature, and character of the proof to be produced.

One cannot allege as error that which is for his own benefit.

Where it appeared that a creditor had not caused an execution to be issued on his judgment, and had made no effort to collect it, and the Court, on a creditor's bill being filed, decreed the payment of such judgment, it was held to be erroneous.

Where a judgment in attachment has been rendered against a defendant who has not been brought into Court so as to make it a judgment *in personam*, such judgment is not evidence of a debt.

Bill in Chancery, &c, in the Pike Circuit Court, filed by the defendant in error against the plaintiffs in error, and heard before the Hon. Samuel D. Lockwood, at the September term, 1844.

The decree rendered in this case, and the allegations of the bill, &c. are stated in the Opinion of the Court.

M. McConnell, for the plaintiffs in error; D. A. Smith, for the defendant in error.

The Opinion of the Court was delivered by

Caton, J. The bill states that the complainant, on the 9th of February, 1839, received from three of the defendants, J. & G. A. Manchester and Dewell, three promissory notes, bearing date of that day, and executed by them for a good consideration, amounting in the aggregate to the sum of $2876.92. The one which fell due last, was for the sum of $980.21, which was payable one year from date. That on the 2d December, 1839, he obtained a judgment

against John Manchester, impleaded, &c., on another of said notes before the Probate Court of Pike county, for the sum of $920.09. That at the April term, 1840, of the Pike Circuit Court, he obtained a like judgment on the other of said notes, for $994.90. That executions have been issued on said judgments, but returned unsatisfied, except as to $49.50, made on the first judgment, and $160.01 made on the second judgment. That he is in danger of losing the balance of said indebtedness by the fraud and insolvency of the makers of the notes, and of the defendant Thomas Manchester.

That on the 11th of October, 1839, the defendant, Delahay, mortgaged to John Manchester certain real estate, which is described, to secure the payment of $2,700, payable in one year. That on the 13th of November, 1839, John Manchester conveyed to Thomas Manchester, certain other real estate described, fraudulently, and with the intent to defraud the complainant and other creditors. With the view of showing that this transfer was fraudulent, the bill sets forth a variety of circumstances, which it is unnecessary to notice here. That on the same day, John assigned Thomas the said mortgage with the like fraudulent intent. To foreclose this mortgage, Thomas Manchester filed his bill in the Pike Circuit Court, on the 2d of March, 1841, and a decree of foreclosure was entered at the September term, 1841, under which the mortgaged premises were sold on the 18th December, 1841, to the said Thomas Manchester, for $2,730.25.

There is another proceeding set out in the bill, which, as it cuts no important figure in the case, it is unnecessary to mention.

The bill then avers, that "by a mortgage junior to the aforesaid mortgage," Vansyckle for himself, McConnell & McDougall, "or otherwise, is in possession of the said mortgaged premises, claiming an interest therein," and is exercising a ferry privilege, &c., and that Matthews "is in possession of some other parts of said real estate, claiming some sort of interest in the same."

In the prayer of the bill, the complainant asks for an equitable writ of attachment, to be levied upon the said real estate as the property of John Manchester, to be applied under the decree of the Court to the payment of the note first above mentioned. The prayer also asks that the said conveyances of real estate, and assignment of the mortgage from John to Thomas Manchester, may be set aside as fraudulent, and that the said real estate may be sold by the order of the Court, "in satisfaction of what may be due your orator in the premises," and for general relief.

John, Thomas, and George Manchester, and Dewell, being non-residents, were brought in by publication, and the other defendants were served with summons. On the 1st day of June, 1843, an order was made, allowing the complainants to take the deposition of the defendant, Delahay, subject to exceptions for interest, and on the same day, also, the bill was taken for confessed as to George Manchester, Dewell and Delahay.

On the 8th of June, 1843, Thomas Manchester filed his answer, and on the 12th of the same month, John Manchester filed his answer, both denying the alleged fraud, and insisting that the sales and assignment were *bona fide*, and for a good consideration. And on the 23d of the same month, Vansyckle, McConnell and McDougall filed their demurrer to the bill.

On the 9th of September, in the same year, a replication was filed, and on the same day, by leave of the Court, the complainant filed an amendment to his bill as the record states, showing that, at that term of the Court, the complamant had obtained a judgment at law, on the first described notes for the sum of $1,190.91, and costs.

On the 6th of September, 1843, the demurrer was submitted to the Court, and was taken under advisement, till the 4th of September, 1844, when it was overruled, and for want of answer, the bill and amended bill were taken as confessed against Vansyckle, Mc Connell, McDougall and Matthews. On the same day, the cause was fially heard, and a decree upon the merits entered. The decree determines—

1. That the complainants obtained judgment at law on the said three promissory notes, as alleged in the bill and amended bill;

2. That the said assignment and transfers were made in fraud of the said complainant;

3. That the Master make sale of said premises, and convey the same to the purchaser by deed, conveying all the right, &c. of the defendants to said premises, subject only to such right of redemption as the judgment creditors of John Manchester may have to the same; and that said Master pay over the proceeds of said sale to the complainant, the balance due on such judgments and interest:

4. It is ordered, that upon making sale of any of said premises, all persons in possession thereof by virtue of any assignment from any of the defendants since the filing of the bill, give the posses-

sion to such purchaser, and especially to the Naples Ferry, appertaining to a portion of said land; and

5. Costs are adjudged against John and Thomas Manchester, and cause continued for report.

On the 19th of April, 1845, the Master reports, that on the 14th of September, 1844, after notice, &c., in pursuance of the decree, he offered four of said tracts separately, the first containing forty acres, the second containing five acres, the third containing one hundred and fifty-five acres, and the fourth containing fifty-eight acres, the said land being appurtenant to the Naples Ferry, and there were no bidders, when he offered them together, and the complainant became the purchaser at $1,400.00. At the same time, he offered for sale four tracts, which were bid off by the complainant at prices from seventy-five cents to three dollars and seventy-five cents per acre; and two tracts of forty acres, and one tract of eighty acres, which were struck off to the complainant for ten cents each; for all of which he had given a deed to the complainant, subject to the right of redemption as specified in said decree. The Commissioner further reports, that there had been no offer to redeem any part of said premises under said decree, which report was approved by the Court.

I shall first inquire, whether the demurrer of Vansyckle, McConnel and McDougall was properly overruled. These defendants, so far as is shown by the bill, were merely nominal parties, who might or might not have any interest, which might be affected by the decree. They were made parties to give them an opportunity to come in and show their interest, if they had any, to specify its nature and extent in their answers, and to defend and protect it. The bill does not show that they had any, nor does it appear that the complainant knew of any interest existing in them. The averment of the bill is, that one of them was in possession of a portion of the premises sought to be subjected to the payment of complainant's debt, for himself and the other two, by a junior mortgage or otherwise. This showed such a claim of interest, as the complainant had a right to protect himself against, by making them parties, and concluding them by the decree, unless they could show that they ought not to be thus concluded. Such is the usual and proper course in all Chancery proceedings. The averment, then, so far as these defendants were concerned, was right and proper; and if the bill was, in other respects, such as entitled the complainant to relief, the demurrer was properly overruled.

This is a creditor's bill, whereby the complainant seeks to subject certain lands, which he could not reach by an execution, to the payment of two judgments, one obtained in the Probate Court, and one in the Circuit Court of Pike county. The bill shows the recovery of the judgments against John Manchester, that executions had been issued upon those judgments, which had been returned unsatisfied, excepting as to a small amount of each. This is sufficient to entitle the party to file his bill. *Beck* v. *Burdet*, 1 *Paige* 305; *Rev. Stat.* § 36, *ch.* xxi. *tit. Chancery.* It shows *prima facie*, that he had exhausted his legal remedy. It is as much as is required, in the first instance, of a second endorser of a note under our Statute to show, to enable him to recover of the first endorser; and in this case as in that, the defendant might probably resist the application successfully, by showing that the complainant actually knew of other property, out of which he might have made his debt by execution. This far, then, the bill is sufficient. It further shows, that for the purpose of hindering and delaying the complainant in the collection of his debts, and for the purpose of defrauding other creditors, the judgment debtor had transferred a considerable amount of real and personal property to the defendant, Thomas Manchester, and had, with the like intent, assigned to him a mortgage upon other lands, which the assignee had foreclosed, and purchased in the lands in his own name, and prays that all of these lands may be subjected to the satisfaction of what may be due to the complainant in the premises. According to the well established rules of Equity law, this shows such a case as entitles the complainant to relief. The extent of that relief may be hereafter considered, but this is sufficient to show that the bill was not obnoxious to a demurrer.

I may here remark upon a novel proceeding, attempted to be introduced by this bill; and that is, that for the purpose of securing and obtaining satisfaction of one of the notes mentioned in the bill, (but upon which no judgment had been obtained at law,) the party prays for an *equitable attachment* to be levied upon the premises upon which the mortgage had been foreclosed, and which had been purchased in by Thomas Manchester, the alleged fraudulent assignee of the mortgage. But, for this proceeding, I can find no authority in the former practice of the Courts of Equity, or in the provisions of our Statute. For the purpose of obtaining a satisfaction of this note, the amended bill was filed, averring, that since the filing of the bill in this cause, the complainant had obtained a judgment upon that note also. This branch of the case will be again referred to.

It may be well now to examine and see what position the several plaintiffs in this writ of error occupy in relation to this decree, as exhibited by this record. In the first place, the bill was taken for confessed, as to all of them except John Manchester and Thomas Manchester. Vansyckle, McConnell, and McDougall appeared and demurred to the bill. That demurrer, as we have seen, was properly overruled. They then refused, or at any rate failed to file an answer, and then the bill was regularly taken *pro confesso*, as we are to presume, according to the rules of practice and usage of that Court, against them, as also against the other defendants, G. A. Manchester, Matthews, Dewell and Delahay, who never appeared before that Court at all. I am of opinion, that a party against whom a bill is taken for confessed, cannot complain and assign for error, that the proof does not sustain the allegations of the bill. The nineteenth section of our Chancery Act, provides that, "where a bill is taken for confessed, the Court, before a final decree is made, if deemed requisite, may order the complainant to produce documents and witnesses to prove the allegations of his bill, or may examine the complainant on oath or affirmation, touching the facts therein alleged; such decree shall be made in either case as the Court shall consider equitable and proper." By this law, when a bill is taken for confessed, it is left to the discretion of the Court, whether any proof shall be required in support of the bill or not, or what parts of the bill shall be supported by proof, and of necessity, what shall be the amount, nature and character of proof to be produced. With such a discretion vested in the Court, it would seem absurd to say, that the Court acted upon insufficient proof. If it would not be error to make a decree without any proof, it is not easy to comprehend where the error is, in rendering a decree upon insufficient proof. Where a bill is taken for confessed from the silence of the party, he is as much estopped in that particular case, from denying its truth—except in particular instances where he may come in under the statute and open it—as if he had appeared in open Court and filed an answer, confessing the truth of the bill throughout. Here, a part of these defendants did, in fact, confess the truth of this bill by their demurrer, and insisted that the facts, thus confessed, did not entitle the complainant to any relief, and when that was ruled against them, they chose to abide by that confession rather than withdraw it, and file an answer putting in issue the allegations of the bill. After this, they cannot complain that that is not proved which they have admitted to be true.

As to Thomas Manchester, it appears from the record here, that he has released to the complainant all errors in this cause, by not replying to the complainant's plea averring that fact, so that he has ceased to complain, and he is the only party in fact, whose interest could have been affected essentially by this decree, so far as it appears from this record. A similar plea is interposed as to Mitchell, to which also there is no replication.

And now how stands it with John Manchester? He, it seems to me, is the last person of all others who has any right to complain of this decree, in which, if there is any error, it most manifestly is in his favor, and directly to his advantage; for by it a considerable amount of judgments against him is paid out of the property of another, which, according to his own answer, he has sold and received his pay for; and it seems to me that his conscience need not be too sensitive on the subject, since he has promptly come forward, and done all he could to prevent such a result by his answer. If, in this decree, error has been committed, it is in his favor, although against his will, and he cannot complain. *Schlencker* v. *Risley*, 3 *Scam.* 486. Although, as we have seen, none of the parties who are complaining, have any right to complain that the allegations of this bill are not sustained by the proof, yet we do not hesitate to say, that those allegations are made out in their most material particulars by the evidence, especially so far as they have been put in issue by the answers; but from the view which we take of this cause, it is not necessary to encumber the Opinion of the Court with a particular review of it.

It now remains to be considered, whether the decree which was rendered, was such as the allegations of the bill and amended bill authorize; for although the defendants below, who allowed the bill to be taken *pro confesso*, cannot now deny its truth, yet they have a right to insist that no decree shall be made which may affect their interest, beyond what their admissions will warrant. The complainant has made them parties to bar their interests, and he must see to it, that he confines himself to the rights which he has claimed to have.

What has been already said on the subject of the demurrer, shows that the complainant was entitled, by the allegations of the bill, to the relief sought, to the extent of the payment of the two first judgments out of the property fraudulently conveyed. But as it was insisted that the prayer only sought the payment of the note described in the bill, and not of the two judgments, it becomes

necessary to examine the prayer with the view to ascertain if that be so.

The prayer of the bill commences with asking for an equitable attachment to be levied upon said real estate, as the property of John Manchester, to be applied under the decree of the Court to the payment of the first note. It is supposed by the counsel for the defendant in error, that it is upon this portion of the prayer, that the Court decided the payment of the two judgments; and if so, it was certainly unauthorized, for by this the party only seeks satisfaction of the note under that attachment proceeding, which, as we have seen, was unauthorized, and hence the prayer must be considered as if that portion were stricken out. After that, the prayer asks that the said real estate may be sold by the order of the Court, in satisfaction of what may be due your orator in the premises. This was manifestly asking all that was due to him on account of the several demands previously stated in the bill, and was manifestly sufficient. But if any doubt could be entertained on the subject, the general prayer is sufficient to authorize the granting of any relief which the statement of the bill would warrant.

It now remains to be examined, whether the Court was warranted in decreeing the payment of the judgment which was rendered in the attachment suit, which was obtained after the filing of the bill in Chancery, and which is brought to the notice of the Court by the amended bill. There are two objections, which, to my mind, are conclusive against that portion of the decree which directs the payment of this judgment. The first objection is, that no execution was ever issued upon this judgment, and consequently, no effort made to collect it at law. This is indispensable, according to the case of *Beck* v. *Burdett* before referred to, and this is supported by all the cases which I have examined. If it should be said, with a view to obviate this difficulty, that the property levied upon was not liable to an execution, and that, consequently, it would have been futile to have issued one upon which nothing could possibly have been made; that but shows that the attachment was levied upon property not liable to the attachment, and that being a proceeding *in rem*, for want of anything upon which it could legally act, the Court should not have entertained the case, but dismissed it, which it would have done, had the plaintiff informed the Court that the property levied upon was not subject to attachment. But there is another objection, which it seems to me is equally fatal, and that is, that a judgment in an attachment suit where the defendant has not been

brought into Court so as to make it a personal judgment, is not evidence of the debt upon another suit brought upon that record. The decree, then, will have to be modified, so as to allow the complainant only to seek a satisfaction, out of the said real estate, of the two judgments stated in the original bill, and that portion of it which directs the satisfaction of the judgment in the attachment suit will have to be reversed. As the sale was ordered and made upon an erroneous decree, which is partially reversed, the sale has to be set aside of course, and a re-sale ordered; and hence it becomes unnecessary to look into the regularity of that sale, which otherwise would present a very serious question.

The decree of the Circuit Court is reversed, and the cause remanded with directions to the Circuit Court, to render a decree, and to proceed consistently with the principles of this Opinion; and that each party pay one half of the costs of this writ of error.

*Decree reversed.*

---

DISTRICT COURT OF VAN BUREN COUNTY, IOWA: MARCH TERM, 1848.

[BEFORE OLNEY, J.]

## WOOD *v.* BOWMAN.

PHYSICIANS' DUTIES, LIABILITIES, OPINIONS, BOOKS.

A general undertaking to conduct an accouchement, calls for the exercise of all the the skill usually possessed by accoucheurs; and a special agreement, express or implied, is necessary to restrict the liability to the accoucheur's actual knowledge or mode of practice.

Medical books are not, but the opinions of experts are, competent evidence of the truths of medical science.

THIS was an action on the case against a physician for negligence in conducting the delivery of the plaintiff's wife.

The *placenta* was allowed to remain partly detached from the *uterus*, accompanied with slight *hemorrhage*, for thirty-six hours, and was removed by a consulting physician then called in. *Puerperal fever* supervened, followed by permanent ill health. Physicians testified their opinions as to the propriety of the delay and its effect.

The defendant offered to prove that he was a *Botanical* physician, and that, according to the doctrines of that school, his treatment of the case was correct; and he proposed to read medical books in

support of the practice. The plaintiff objected, and the evidence and books were ruled out. The Judge remarked, that the duties of the defendant were not to be measured by his own knowledge and skill, or his own particular mode of practice. Having undertaken, generally, to conduct the accouchement, he was bound to bring to his aid, and apply with care and diligence, all the knowledge and skill usually possessed by practitioners of that art, and which the exigency of the case might require. A stipulation to limit his duties to a particular mode of treatment, could not be inferred, unless he were employed with at least a knowledge that he would pursue that mode. As to the books, they are not competent evidence of the truths of medical science. Those truths are *facts*, provable by the opinions of experts. But such opinions must be given in Court, under the sanction of an oath. Their soundness may then be tested by a cross-examination into the facts and reasonings on which they are based, and the ability and opportunity of the witness to form correct conclusions. The written opinions contained in these books, *have never passed this ordeal. It is sufficiently difficult to extract* the truth from the various opinions of witnesses upon the particular facts of the case. To go to a medical library, and select the standard scientific truths, applicable to the particular case, from a wilderness of conflicting theories, concerning which these books are filled with ingenious and acrimonious controversies, is what a jury could never do.

The Court directed the jury to determine whether the *placenta* ought to have been sooner removed; whether ordinary skill and attention on the part of the defendant would have led him to that conclusion; and whether the delay caused or contributed to the sickness of the patient. If the evidence is insufficient to affirm these three propositions, the defendant is entitled to a verdict; if sufficient, the plaintiff is to recover such damages, as, in the discretion of the jury, guided by a sense of honest fairness, they shall think he ought to have for the cares, anxieties, and expenses of the sickness thus occasioned, for the loss of the society, counsel, and assistance of his wife, and for the temporary and permanent injury to his domestic comfort and happiness. *Verdict for the plaintiff.*

## SUPREME COURT OF NEW YORK: RENSSELAER GENERAL TERM, JUNE, 1848.

[From the Code Reporter.]

### Blunt *v.* Boyd. In Error.

A being indebted to B, (a debtor to one C,) promised C to pay him, C, the amount due from him, A to B.

In an action on such promise, by C against A, *Held*, that such promise was not made void by the Statute of Frauds.

*Held*—Harris, J., dissenting—that such promise was nudum pactum, unless made upon other consideration than the original indebtedness of A to B.

The following are the facts of the case:

The now plaintiff being indebted to one Rowley $150, and Rowley at the same time being indebted to the now defendant $87, on settlement between the now plaintiff and Rowley, it was agreed that the now plaintiff should discharge his debt due to Rowley, by giving Rowley a note for $63, and paying the now defendant $87. Subsequently the now defendant sued the now plaintiff in the Mayor's Court, at Albany, to recover the said sum of $87, and obtained a judgment. On that judgment the now plaintiff brought his writ of error.

By the Court—Parker, J. The first question to be determined is, whether the promise made by the now plaintiff to pay the debt due to the now defendant, from Rowley, was void by the Statute of Frauds.

In the recent case of *Barker* v. *Buchlin*, 2 *Denio* 45, Jewett, J. has reviewed the cases on this point. The distinction between a promise of a party to pay his own debt to a third person, instead of to his own creditor, and the promise to pay the debt of another, upon some other consideration, is fully sustained, and the former was held not to be within the Statute.

In this case there was no privity of contract between the now plaintiff and defendant. No new consideration passed from Rowley to the defendant. Rowley left $87 of his demand unpaid, and the now plaintiff promised Rowley that he would pay that sum to the now defendant.

In *Barker* v. *Buchlin*, B being indebted to plaintiff, sold property to defendant, on his agreeing to pay the price of it to plaintiff. The defendant, in effect, received money to plaintiff's use: In this re-

spect, that case differs from the one we are now considering. In the present case, there was no new and distinct consideration: the now plaintiff received nothing to the now defendant's use. He had previously had the benefit of the labor of Rowley, for which he still owed him. If Rowley had received from defendant all the money due to him, and then paid back to the now plaintiff $87, to be paid to the now defendant, the action could have been maintained. And such payment would not have been a mere form: it would have changed the substantial rights of the parties. It would have discharged Rowley's claim against the now plaintiff.

When suits have been brought by a person not a party to the contract, but for whose benefit it was made, the question whether the defendant had received money or property as a consideration for the promise, has been in general regarded as the controlling circumstance.

In *Farley* v. *Cleveland*, 4 *Cowen* 432, Moon was indebted to the plaintiff in $100, for which plaintiff held his promissory note. After the maturity of the note, Moon sold to defendant a quantity of hay, worth $150, in consideration of which Cleveland promised to pay the amount due on Moon's note. In giving the opinion, Savage, C. J., said: "In all these cases, founded upon a new and original consideration of benefit to the defendant, or harm to the plaintiff, moving to the party making the promise, either from the plaintiff or the original debtor, the subsisting liability of the original debtor is no objection to the recovery." The Supreme Court gave judgment for the plaintiff, which was affirmed. 9 *Cowen* 639.

In *Elwood* v. *Monk*, 5 *Wend.* 235, defendant was held liable to the plaintiff on a promise made to J. M. to pay his debt to the plaintiff in consideration of property received from J. M.

In all cases there must be a new and distinct consideration. Such a consideration was wanting in this case. Indeed, the evidence shows no consideration for the promise. There was never any discharge of the indebtedness from Rowley to Boyd, nor of that from Blunt to Rowley.

The whole case rests upon a naked promise from the now plaintiff to Rowley, that he would pay to plaintiff a debt that Rowley owed to the now defendant; and there is no view of the case in which the action can be sustained.

WATSON, J. concurred.

HARRIS, J., dissenting. This clearly is not a case within the Statute of Frauds. The question is, whether Boyd can maintain an ac-

tion upon a promise made to Rowley for his benefit, the consideration for such promise moving from Rowley and not from Boyd.

A writer in the American Jurist, cited in *Barker* v. *Buchlin*, states the rule in very explicit terms. "It is now well settled, that in general, if one person make a promise to another for the benefit of a third, the third may maintain an action upon it, *though the consideration does not move from him.*" If the promise of Blunt to pay the debt of Rowley to his creditor, the now defendant, had been founded upon a then present consideration moving from Rowley to Blunt, then it is not denied that this action would be maintainable. Thus, if instead of allowing Blunt to retain the $87, upon his promising to pay the debt specified, he had received the amount and immediately returned the same to Blunt, upon his promise to pay the same to the now defendant, then this action, it is admitted, could have been maintained. But I am entirely unable to discover any foundation for such a distinction, either in principle, or in the adjudged cases. It is enough, I think, that a promise is founded on value received, and that value may as well consist in an existing indebtedness, as a consideration paid at the time of making the promise. It is true, the liability of Rowley to Boyd would still exist, but it has been repeatedly held, that the continuance of such liability of the original debtor, is no objection to a recovery in such a case. Any consideration which would have been sufficient to sustain the promise, if it had been to pay Rowley instead of his creditor, will be sufficient to sustain the promise to pay the creditor.

But it may be said that if this action be sustained, Blunt may be subjected to a double liability; it is clear, however, that the payment of the debt to Boyd, would be an available defence against an action by Rowley. Suppose that, in the case of *Farley* v. *Cleveland*, Farley had chosen to bring his action against Moon, his original debtor, can it be doubted that Moon, being obliged to pay the debt to Farley, might have maintained an action against Cleveland for the hay. But the fact that Cleveland might then be made liable to Moon, furnished no answer to the action by Farley, on his promise to pay the debt. Nor in this case should the fact that Blunt might, upon his failure to pay, according to his promise, be liable to Rowley, constitute any ground of objection to an action by Boyd, upon an express promise to pay the debt.

*Writ of error allowed.*

## ILLINOIS SUPREME COURT: DECEMBER TERM, 1847.

### The County of Schuyler, Plaintiff in Error, *v.* The County of Mercer, Defendant in Error.

ERROR TO MERCER.

All actions, whether local or transitory, against a county, must be commenced and prosecuted to final judgment and execution in the Circuit Court of the county against which the action is brought; and all actions, local or transitory, wherein a county is plaintiff, must be commenced and prosecuted to final judgment in the county in which the defendant therein resides.

At common law, counties have no right to sue, nor can they be sued. Their right depends on statutory enactment; and where they sue, or are sued, the provisions of the statute nust be complied with.

The word "may" means "must" or "shall," in cases where the public interest and rights are concerned, and where the public or third persons have a claim, *de jure*, that the power should be exercised.

A law, which, in general terms, speaks of plaintiffs and defendants, applies to persons only; and States, counties, and municipal corporations are not affected by its provisions, unless expressly named and brought within them.

Debt, in the Mercer Circuit Court, brought by the defendant in error against the plaintiff in error. The defendant was defaulted at the May term 1845, and a writ of inquiry of damages awarded. At the September term 1845, the Hon. Thomas C. Browne presiding, the jury returned a verdict in favor of the plaintiff for the sum of $112.89, and the Court rendered a judgment accordingly.

*R. S. Blackwell*, for the plaintiff in error.

The Court below had no jurisdiction.

1. Because there is no averment in the declaration, that the cause of action accrued, or was specifically made payable in the county of Mercer, where the plaintiff resided, and where this suit was instituted. Rev. Stat. 413, §2; *Clark* v. *Harkness*, 1 Scam. 56; *Key* v. *Collins*, ib. 403; *Wakefield* v. *Goudy*, 3 do. 133; *Brown* v. *Bodwell*, 4 do. 302; *Clark* v. *Clark*, 1 Gilm. 33.

2. Because by statute it is provided that "all actions, local or transitory, against any county, *may* be commenced, &c. in the Circuit Court of the county against which the action is brought," &c. Laws of 1827, 109, §6; R. L. 140, §6; Rev. Stat. 132, §18.

This statute, we insist, is *compulsory* and not permissive. All actions against counties *must* be commenced,&c. in the Circuit Court of the county against which the action is brought. In statutes of a

public nature and relating to public rights and duties, the word *may* means *shall.* Cro. Jac. 134; Cro. Eliz. 655; *King* v. *Barlow*, 2 Salk. 609; *Malcom* v. *Rogers*, 5 Cowen, 188; *Miner* v. *Mec. Bank, &c.*, 1 Peters, 46.

3. The declaration is insufficient. *Salem* v. *Andover*, 3 Mass. 436; *Bath* v. *Freeport*, 5 do. 326–7; Laws of 1841, 190–1.

4. The verdict and judgment are erroneous for not distinguishing between the debt and damages. *Wilman* v. *Bank of Illinois*, 1 Gilm. 671; *Mager* v. *Hutchinson.* 2 do. 270.

5. The Court had no power to award an execution against the county of Schuyler, the only way of enforcing a judgment against a county being by *mandamus*, or attachment. Rev. Stat. 133, §20.

*A. Williams*, for the defendant in error.

It is insisted by the counsel for the plaintiff, that the Court below had not jurisdiction of the parties, because it is not averred that the cause of action accrued in the county of the plaintiff below. It is stated that the pauper became chargeable as such in the county of Mercer, to that county; that the County Commissioners of Mercer county notified the County Commissioners of the county of Schuyler of that fact, and requested them to remove said pauper· that they neglected to do so; that thirty days next preceding said pauper so becoming chargeable to the county of Mercer, she was a resident of the county of Schuyler. From this it appears conclusively, that the cause of action did accrue in the county of Mercer, but it is insisted that the formal averment should have been made that the cause of action accrued in the county of Mercer, and that the county of Mercer resided in the county of Mercer. This is required by no principle of reason, or rule of positive or technical law.

But it is said that the county of Schuyler could only be sued in that county, and this is founded upon the notion that the provision that counties *may* be sued in the Circuit Court of the county sued, means, *ex vi termini*, "*shall* be sued there, and not elsewhere." The word "may" when used in statutes should be construed as permissive, or imperative, according to the intention of the legislature, in each case where it is so used. In its grammatical construction, it is permissive, and not imperative, and there is nothing to show that in this case it was intended to be imperative. It is not the provision by which counties are subjected to suit. Counties are subjected to suit by other provisions in as general and extensive terms as individuals, Courts being established and clothed with jurisdiction to try cases between counties as well as individuals.

The Practice Act is enacted for the guidance of the Court in the exercise of its jurisdiction. It is provided in this Act, in terms that include counties as well as individuals, that when the cause of action accrues in the county of the plaintiff, suit may be commenced in that county. There is nothing in the words, or spirit of this provision to exclude from its operation cases in which counties are parties.

The opinion of the Court was delivered by

PURPLE, J.* On the 21st day of October, A. D. 1843, the defendant sued the plaintiff in an action of *debt* in the Circuit Court of Mercer county to recover a sum of money, which, as the declaration alleges, the defendant had expended in maintaining a pauper, who, at the commencement of thirty days immediately preceding the time she became chargeable as a pauper to the county of Mercer, was a resident of the county of Schuyler; which last mentioned county thereby became liable, upon notice having been given to remove said pauper, for such maintenance.

No appearance was entered by the plaintiff; a judgment by default was rendered; a writ of inquiry of damages awarded, which was executed in vacation; returned, and judgment entered against the county of Schuyler upon the verdict of the Jury of inquest for $112.89 and costs.

The plaintiff seeks to reverse this judgment.

Only one point made in the case, (being decisive of the question,) will be noticed.

The Circuit Court of Mercer county, (the process having been issued to, and served in the county of Schuyler,) had no jurisdiction of the case. This will be manifest from an examination of the Act of the General Assembly, entitled, "*An Act to incorporate Counties,*" approved January 3d, 1827. Rev. Laws, 1833, 139.

The first section makes all counties then existing, or thereafter to be established, bodies corporate and politic, and authorizes them to sue, and renders them liable to be sued in their respective county names.

The sixth section provides, that "all actions, local or transitory against any county *may* be commenced and prosecuted to final judgment and execution in the Circuit Court of the county against which the action is brought. Any action local or transitory i which any county shall be plaintiff *may* be commenced and prosecuted to final judgment in the county in which the defendant in such action resides."

* WILSON, C. J. and Justices KOERNER and DENNING did not sit in this case.

Independent of some special statute, counties have no common law right to sue, nor are they liable to be sued. This statute confers this right, and imposes such liability. The same Act prescribes the method of the service of process, and establishes the forum of trial, both in cases where the county is plaintiff and defendant.

It is evident that unless some other statute has prescribed a different rule, counties can only bring their suits in the Courts, and in the manner allowed by this Act. The word "*may*," as used in the sixth section, means *shall*. When a county sues, the term applies in an imperative, and not in a permissive sense. Such was the manifest intention of the Legislature.

The rule is, that "the word *may* means *must* or *shall* only, in cases where the public interest and rights are concerned, and when the public, or third persons have a claim, *de jure*, that the power should be exercised." *Malcom* v. *Rogers*, 5 Cowen, 188. Thus, where a statute says that a sheriff *may* take bail, it has been construed to mean that he *shall* do so. And where it is provided that a plaintiff *may* assign breaches in his declaration, he *must* so assign them or fail in his action; because of the right *de jure*, of the defendant, that they should be so assigned. Such is understood to be the rule, and the illustrations given are deemed sufficient to show its practical operation.

The Act of Dec. 30th, 1828, entitled, "*An Act to amend an Act concerning Courts of Law*," approved January 29, 1827, (Rev. Laws, 1833, 145,) authorizing process in certain cases to issue against defendants residing in foreign counties, and which Act, by the Revised Statutes of 1845, is incorporated into the General Practice Act, has not, at least so far as this case is concerned, any bearing upon the question. Ordinarily, a law, which, in general terms, speaks of plaintiffs and defendants, applies to persons only; and States, counties and municipal corporations are not affected by its provisions, unless expressly named and brought within them.

The judgment of the Circuit Court of Mercer county is reversed.

*Judgment reversed.*

COURT OF ERRORS AND APPEALS OF NEW JERSEY: OCT. TERM, 1846.

PINTARD *et. al.* IMPLEADED, &c. *v.* DAVIS.

[FROM 1 AMERICAN LAW JOURNAL, N. S. 70.]

1. One of two or more co-obligors in a money bond cannot at law aver that he is only a surety.

2. A surety is not discharged by requesting the creditor to sue the principal debtor while still solvent, though the creditor neglects to sue, and the debtor afterwards becomes insolvent.

3. A surety cannot by notice *in pais* compel the creditor to sue the principal.

ERROR to the Supreme Court. This was an action of debt brought in the Monmouth Circuit Court by Davis against Pintard and two others who were impleaded with one Morford, upon a joint bond, dated June 9, 1829, given by the plaintiffs in error and the said Morford to Davis in the penal sum of $800, conditioned to pay $400 in one year from date. The declaration was in the usual form. The defendants (except Morford) pleaded specially that the action ought not to be maintained against them, because Morford signed the bond as principal and they as sureties only, and that the bond was given for the proper debt of Morford, of which the plaintiff had notice at the date of the bond. That after the bond became due, to wit: in 1833 they requested the plaintiff to collect the money of Morford who was then solvent, and so continued for eight years thereafter, and that the same could then have been collected of him, but that the plaintiff without reasonable excuse neglected to take any legal measures against him or to proceed in any way to collect the same. That Morford became insolvent and so continues, so that by the neglect of the plaintiff the loss will fall on his sureties if they should be compelled to pay the debt.

To this plea the plaintiff demurred, and the Circuit Court held the plea to be insufficient. The judgment of the Circuit Court was affirmed on Error in the Supreme Court, (Spencer's Rep. 205,) and thereupon a writ of error was brought to this Court.

MR. WALL & MR. VROOM for plaintiff in error: In equity the surety may compel the creditor to collect the debt and any thing done by the principal to injure the surety, as by giving time or changing the character of his liability, discharges the surety. But the surety is not obliged to resort to a court of equity to stimulate the diligence of the creditor. Although it may be admitted that it is still otherwise in England, yet here we are not so strictly bound

by the forms of the common law, and relief may be had in many cases at law. Whether a surety is discharged or not is a legal question. Mere laches may not discharge a surety, but if injury occur in consequence of delay after notice, as in case of subsequent insolvency in the principal, then the surety is discharged. 1 Brs. C. C. 582; 2 Ves. Jr. 540; 4 Dal. 135; 8 S. & R. 110; 7 John. 332; 13 Ib. 174; 15 Ib. 433; 17 Ib. 384; 1 Hill (S. C.) Rep. 16; 3 Wend. 216; 13 Ib. 377; 10 Ib. 162; 3 Wash. C. C. R. 70, 75.

Mr. Vredenburg & Mr. Dayton contra cited 6 Ves. 734; 2 John. Ch. R. 554; 2 Pick. 581; 4 Ib. 382; 5 Ib. 307; 2 South. 585.

Carpenter, J. Whether a surety is discharged or not may be a legal question, but in the case of a sealed contract it must be when the suretyship appears on the face of the instrument. The solemnity of such instruments forecloses in general all inquiry into the consideration.—If bound as principal, a defendant cannot aver at law that he is only a surety, though in equity parol evidence is admissible to show who is principal, and who surety. In this State this clear rule of the common law has never been infringed. In *Manning* v. *Shotwell*, 2 *South.* 584, the creditor who had been called upon to sue the principal discontinued the suit and gave him further time. The court held that this did not form any defence at law to a suit against the makers of a sealed bill.

But independent of this technical objection, which however is fatal to the legality of the plea, the defence cannot be maintained. The undertaking of such surety is absolute. It is his business to see whether the principal pays and not that of the creditor. If he lies by and the insolvency of the principal intervenes, he must abide by the loss and cannot throw it on the creditor. Mere delay to require payment, without any binding contract for that purpose and without fraud, will not discharge a surety, and upon the facts of this plea there could be no relief even in Chancery. Supposing the surety can call upon the creditor to do the most he can for his benefit, it must be upon terms that will secure the creditor from all the consequences of risk, delay or expense. *Wright* v. *Simpson*, 6 *Ves.* 734; 2 *Story Eq. T.* § 849. But no sanction has ever been given in this State to the present attempt to invert the natural order of the obligations created by the contract of surety. The cases of *Pain* v. *Packard*, 13 *John.* 174, and *King* v. *Baldwin*, 17 *Ib.* 384, are not generally recognized as authority and have introduced into the State in which they were decided a new rule between creditor and surety which we think unnecessary and inexpedient. The surety

has ample means of relief more in accordance with the nature of his contract. He may compel in a Court of Equity the payment of the debt, or a more obvious and simple course, he may pay the debt himself according to his undertaking, and then sue the principal upon his implied contract for reimbursement. The present case is one of mere delay, and we do not recognize the rule that the surety by a simple demand *in pais* can remove the duty of active diligence from himself to the creditor. We are all of opinion that the judgment of the Supreme Court must be affirmed.

The Court (the chancellor, Whitehead, Carpenter, Randolph, Speer, Spencer, Porter, Schenck, Robinson & Sinnickson,) unanimously affirmed the judgment of the Supreme Court.

Hornblower, C. J. and Nevins, J. did not sit on the argument of the cause.

---

NEW ORLEANS FIFTH DISTRICT COURT: JULY, 1848.

[BEFORE JUDGE BUCHANAN.]

## In the matter of Hugh M'Donnell, praying a Writ of Habeas Corpus.

MILITARY OFFICER—EXEMPTION FROM CIVIL ARREST.

The petitioner alleges that he was appointed Assistant Quartermaster, with the rank of Captain, in the service of the United States, to rank as such from the 7th of October, 1846, and entered on the discharge of his duties as such, and is now attached to the army of the United States, under the command of Major General Wm. O. Butler; that in conformity to the orders of his superior officers, he was attached to the brigade of Col. Brough, and was directed to remain with said brigade until mustered out of service; that in compliance with said orders, petitioner accompanied said brigade to this city, through which it had to pass for the purpose of rendering itself at the place of its final destination, to wit: the States of Ohio, Indiana, and other Western States, according to orders from the War Department. That while petitioner was temporarily passing through this city in the service aforesaid, the firm of A. L. Addison & Co., of this city, caused him to be arrested by virtue of a writ of arrest, emanating from the Fourth District Court of N. Orleans, for debt; that being so arrested by the Sheriff, he was released from custody, Michael Gernon and Patrick Garner having

become his bail; to whose custody as his bail he has been consigned, and in whose custody he now is, and that his bail threaten to surrender him to the Sheriff in order to release themselves from their liabilities. Under these circumstances, and whereas he is illegally in custody under said wri , which he alleges is null and void, and inoperative to him while actually attached to the army of the United States, and acting under the orders of his superior officers, and only transiently and in obedience to said orders, in the city of New Orleans, he prays a writ of habeas corpus.

The securities of petitioner came into Court, and in answer to the writ, say that they have been informed and believe that the petitioner has orders from his commanding officers to leave the State of Louisiana, and is actually on the point of leaving the State, and they have custody of his person, for the purpose of surrendering him to the Sheriff, which they have done in order to discharge themselves.

The Sheriff, in answer to the writ, says, that having arrested said petitioner by virtue of the bail writ from the Fourth District Court, he was bailed, but that said sureties having surrendered the petitioner, the Sheriff holds petitioner in custody, by virtue of the said bail writ.

Gustavus Schmidt for petitioner.—W. A. Elmore for A. L. Addison & Co.

After evidence and argument, the Court considering that Hugh O'Donnell, a Deputy Quarter Master in the United States army, and now acting under orders from his lawful superiors, which require him to leave the State of Louisiana, whither he has come by virtue of such orders, has been arrested in a civil suit, by virtue of which arrest he is required not to leave the State of Louisiana, for the space of three months. Considering likewise that if said arrest be legal, then the petitioner must disobey his superiors and violate the orders by him received, which would be an improper interference with the authority vested in the Executive of the United States, and deprive it of the exclusive control of the army of the United States, a result which the law did not contemplate, and which the Judiciary cannot sanction, without trenching on the powers of the Federal Executive under the Constitution of the United States. Under these circumstances, the Court being of opinion that the law authorizing the arrest of a non-resident does not apply to the petitioner, and, considering the provisions of the 4th paragraph of the 822d article of the Code of Practice, it is ordered that the petitioner, Hugh O'Donnell, be discharged from the custody of the Sheriff of the Parish of Orleans, and be forthwith set at liberty.

## THE LAW OF MARRIAGE.

THE question whether a man can lawfully take for a second wife the sister of his deceased wife, has been recently examined in England by a Royal Commission—Lord Bishop of Litchfield, the Hon. James Stuart Wortly, M. P., Sir Stephen Lushington, D. C. L., Mr. Anthony Richard Blake, Sir Edward Vaughan Williams, and Mr. Andrew Rutherford. The first report of these Commissioners has lately been published, together with the evidence of the witnesses examined, and other appendices. The report itself occupies a space of ten pages. The result of their investigations into this question, in reference to the different counties, is as follows:

The commissioners find, from their minute investigation of the laws of foreign countries, that marriages of this kind are permitted, by "dispensation" or otherwise, in nearly all the continental states of Europe.

It appears that, in the Romish church, they are prohibited as matters of discipline, but that such prohibition may be, and frequently is dispensed with by the Pope, or by some others acting under his authority; the principle of this dispensation being that the prohibition has been imposed by the church, and not by the law of God; and that, consequently the church is as free to remove as it it was to ordain the prohibition.

In Protestant countries such marriages are likewise permitted, and solemnized by dispensation or license, under ecclesiastical or civil authority.

In the United States of America, alliances between a man and the sister of the former wife are not only deemed lawful, in a civil sense, but also in a moral, religious and Christian sense; and moreover, exceeding praiseworthy. A great judicial authority in that country, we allude to Judge Story—declares, "Nothing is more common in the States of America than second marriages of this sort, and so far from being doubtful as to their moral tendency, they are, among us, deemed the very best sort of marriages. In my whole life I have never heard the slightest suggestion against them, founded on moral or domestic considerations."

Turning to the Greek church we find these marriages stigmatized as incestuous, and of course disallowed as utterly unlawful. It seems, however, that such marriages are not illegal in Russia, if the contracting parties be without the pale of the Greek church.

The opinion prevalent among the Jews is favorable to these unions, and, so far from condemning such connections, the usual time prescribed for remaining in a state of widowhood is abbreviated in cases where there are children.

The various bodies of English Dissenters do not appear to hold any opinion based on the assumption that these marriages are interdicted by Holy Writ, the sole authority which these respectable classes of the Christian community admit.

The commissioners were naturally anxious to ascertain opinions of the clergy of the established church in England on the two questions of principle and expediency:—1. Whether the marriage with the sister of the deceased wife is prohibited by the Divine law; or 2, if not, whether it ought to be interdicted on any other ground.

The result of this inquiry was unsatisfactory. The clergy are so divided in opinion on both questions that it is impossible to put forth any judicial *dictum* as the expression of the sentiments entertained by so numerous, important and authoritative a body. The majority, especially in Ireland, appear to object to the marriages in question, but on various grounds; and in Scotland, the opinion of the Presbyterian ministers is decidedly averse to them.

After an examination of the question whether statutes prevent such marriages, the commissioners report:—

These marriages will take place when a concurrence of circumstances gives rise to mutual attachment; they are not dependent on legislation. We are not inclined to think that such attachments and marriages would be extensively increased in number were the law to permit them; because, as we have said, it was not the state of the law, prohibitory or permissive, which has governed, or, as we think, ever will effectually govern them.

---

## FORM OF ADMINISTERING AN OATH TO A CATHOLIC.

The Boston Post has the following notice of a case which came before the Criminal Court of that city.

On Thursday, Thomas Mooney, of Endicott street, summoned as a witness in a case, declined to take the oath according to the form prescribed, under the rule laid down in Buzzell's case, in relation to Catholic witnesses. He said that he considered the form of holding up the hand to be as obligatory upon his conscience, as the form of

kissing the Bible. The Court explained to him that in Buzzell's case, Convent Trials, in 1834, Bishop Fenwick conformed to the rule, after the reasons for it had been stated by him. Still Mr. Mooney refused to take the oath in the manner directed, and a rule was issued against him for contempt of Court, and he gave bail in $100 to appear to day to show cause why he should not be proceeded against accordingly. After the Pinkerton case had been submitted to the jury to-day, Mr. Mooney came in with his counsel, G. T. Curtis, and W. J. Walsh who argued that matter. Mr. Walsh, who opened the defence, said that the Catholics regarded the rule as making an invidious distinction. He said that if the rule was founded on an hypothesis, that the Catholics regarded any particular form of oath as more binding than the common form, it was a mistake. The Catholic church has prescribed no peculiar form for invoking the attestation of God to an oath. The obligation of an oath consisted in the invocation—the calling upon God to witness the truth of the declaration made by the deponent. However correct the decision in Buzzell's case might have been in 1834, a different law governed now. The mode of administering the oaths had been prescribed in the Revised Statutes, chap. 94, sec. 7, 8 and 9.

Mr. Curtis followed Mr. Walsh on the same side, but more at length.

The judges retired to the lobby to consult, and in 20 minutes returned, and Chief Justice Shaw delivered the opinion of the Court. He said that when the rule was laid down in Buzzell's case, it was not known to the Court that the Catholics had any peculiar feeling in relation to the subject. The Court believed, from the common sources of information, historical and contemporaneous, general and long acted upon, that persons of the Catholic persuasion regarded the ceremony of kissing the Holy Evangelists as more solemn and more binding upon the conscience, than the usual form of holding up the hand, and hence the oath was administered to them in that more impressive form. The Court did not construe the provisions in the Revised Statutes as changing that rule. They considered it to be reaffirmed by the following section :—

"When the Court or Magistrates, before whom any person is sworn, shall be satisfied that such person has any peculiar mode of swearing, which is, in his opinion, more solemn or obligatory than holding up the hand, they may adopt that mode of administering the oath."

The Court were satisfied that, in general, Catholics believed the

mode prescribed more obligatory than the usual mode. It was no sufficient objection to the rule, that there were many intelligent Catholics who felt one form to be as obligatory as another. The Court must act upon a rule broad enough to include all Catholics. It was no hardship upon a highly educated Catholic, to require him to testify in the same manner as the uneducated Catholic, who cherished a peculiar veneration for the form of oath to which he had been accustomed, and which had been handed down to him from ages.

Having decided the question against Mr. Mooney's objection, the chief justice asked him if he was then willing to be sworn according to the mode prescribed. He replied that he was. The oath was then administered to him on the Bible, and he purged himself of the imputed contempt, by declaring that he intended no disobedience to the lawful authority of the Court, but at the time of refusing to be sworn, he sincerely believed that the Court had no power to require him to take the oath in any other than the usual mode.

The Chief Justice replied that the Court were satisfied that Mr. Mooney had acted in good faith, though under a mistaken notion of the law, and ordered him to be discharged without imposing any penalty or pronouncing any censure.

---

COURT OF COMMON PLEAS OF PHILADELPHIA, JUNE 1847.

[FROM 1 LAW REPORTER, N. S. 171.]

## HOLDEN'S ADMINISTRATORS *v.* MCMAKIN.

NEWSPAPER—PARTNERSHIP—GOOD-WILL.

WHERE there are no articles of partnership, a partnership is determinable at the will of either partner.

A surviving partner holds the partnership effects merely as a trustee for the payment of debts existing at the time of dissolution, while he is bound to distribute the balance equitably between himself and the representatives of the deceased partner. It is his duty to make sale of all the partnership property, *at once*, collect outstanding demands, pay all debts, and divide the balance.

A partnership formed for conducting a newspaper, is commercial in its character, and the law applicable to commercial or trading transactions determines the rights of the parties.

A surviving member of such a partnership is not entitled to the good will, subscription list, speculative value of a newspaper published by him and his deceased partner; but it is partnership property which must be sold with the partnership effects.

A Court of Equity can order a sale of all the partnership property, when the surviving partner neglects to perform his lawful duties. And if the surviving partner be guilty of such mismanagement as clearly proves him unfit to be entrusted with the partnership estate, a Court of Equity will appoint a receiver to collect the debts and dispose of the property.

---

## NEW YORK MARINE COURT: AUGUST, 1848.

[From the Code Reporter.]

### Marsh *v.* Palmo and others.

The clerk of a Notary presented a note for payment, and the note being dishonored, the clerk made a statement of the fact to the Notary, who thereupo n protested the note.

*Held*, that the protest could not be made on the information of a clerk, and that the Notary must present the note in person.

This was an action brought by the plaintiff to recover of the defendants the amount of a promissory note, of which the defendants were respectively the maker and first endorser, the plaintiff being the second endorser and holder.

To prove the notice of dishonor, the plaintiff called a witness who deposed that he was the clerk of the Notary by whom the note was protested; that he (witness) had presented the note to the defendant, the maker, for payment, and that it was dishonored, and that he had given notice of the dishonor to the other defendant, the first endorser; that he (witness) had informed his employer, the Notary, of these facts, and that thereupon the Notary had protested the note in his own name.

Smith, J. I am of opinion that the protest of the note in this case is insufficient. I think a notary cannot protest a note presented by another person: he must present the note in *person*, and cannot act upon the information of a clerk or any third party. The authority and duties of a Notary are of so special, limited, and confidential nature, that he has no power to delegate his authority to another, or appoint another to perform his duties.

# Miscellaneous.

*The New Pension Law.* [From the Cincinnati Enquirer.] This act is far the most liberal law passed, and interests, directly, or indirectly, at least thirty thousand persons. The general principle of this act is, that half pay shall be granted to the widows and orphans of all the officers and soldiers of all descriptions, who died, in any way, in the line of their duty, and who were in the army as volunteers, since the 1st of March, 1846. This covers the families of all who died in the service since that date.

Since the 1st of March, 1846, there have been in the military service of the United States, not less than one hundred thousand men. Of these, some were called out without being marched to Mexico, and of them few died. Of those, however, engaged in the war, about *twenty thousand died.* The widows and orphans of these, if there were any, are entitled to the pensions. The Pension Act, as extended, applies indeed only to the regular army; but the following section of the Act is the one which covers the entire ground for volunteers:

§ 2. *And be it further enacted,* That all widows and orphans of officers, non-commissioned officers, musicians, and privates, whether of the regular army or of volunteers, who have died since the 1st day of April, one thousand eight hundred and forty six, or who may die during the war with Mexico, from wounds received, or from disease contracted while in the line of duty, shall be entitled to the same rate of pension as is provided for in the first section of the before mentioned Act, under like limitations and restrictions.

There are two provisos to this law. The first is, that the death must have occurred in the line of duty, or while returning to the United States, after receiving a surgeon's certificate, or while on the march to the army in Mexico. The second is, that this act attaches only to those who were in Mexico, or on their march thither. This clause, however, includes but a very small number. The pension, in fact, attaches to all, whose father or husband died, in service in Mexico, or on its borders, or on the march to or from there. The half-pay is half what the officer or soldier was entitled to when alive, according to his grade. This act was passed July 15th, and, as is seen by its terms, is one extremely favorable to the families of those who have been hurt in Mexico. We cannot tell how large a proportion of soldiers have left families; but there will doubtless be thousands of claimants under the act.

*Attachments in the United States Courts.* The following is a copy of the Act of Congress to make attachments, which are laid under process issuing from the Courts of the United States, conform to the laws regulating such attachments in the Courts of the respective States.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That whenever, upon process instituted in any of the Courts of the United States, property shall hereafter be attached to satisfy such judgment as may be recovered by the plaintiff on such process, and any contingency occurs by which, according to the laws of a State, such attachment would be dis-

solved upon like process pending in, or returnable to, the State Courts, then such attachment or attachments made upon process issuing from, or pending in, the Courts of the United States within such State shall be dissolved, the intent and meaning of this act being to place such attachments in the Courts of the States and the United States upon the same footing: *Provided*, That nothing herein contained shall interfere with any existing or future law, giving priority in payments of debts to the United States.

The act was approved March 14, 1848.

*City Assessments—Gas Tax.* The city authorities assess a gas tax on the real estate of the city, and in case of non-payment, proceed to sell the land. Joseph Jonas resisted the sale of some ground of his in this way, and by his counsel, Hart & Murdock, filed a bill for an injunction in the Court of Common Pleas. The case has been heard, Mr. Van Matre sustaining the right of the city. An injunction has been allowed. Judge Caldwell delivered, as we are informed, an elaborate opinion, deciding that the despotic power of the City Council to confiscate property for the non-payment of their assessments, was not found in the City Charter. The power is conferred to *levy and collect* a special tax, and the levy might create a lien on real estate for the amount; but to collect these taxes, the city must resort to its regular suit. Nothing short of a direct grant of power can justify the summary seizure and sale of real estate, provided by the ordinance of the city. [*Newspaper.*]

*Principal and Agent.* [Superior Court of New York. Before Chief Justice Oakley and Judges Vanderpool and Sanford. Sidney Mason and Wm. D. Thompson *v.* Edward Lend.] Mr. L. went abroad with an understanding with Messrs. M. & T., and made purchases from time to time of large quantities of sugar, four cargoes of which he sent to M. & T. in this city, who received it. The enterprise proved a losing one, and a controversy has arisen between the parties, Mr. Lend seeking to make M. & T. jointly responsible for the loss, and they, on the contrary, to get rid of liability in the operation altogether, averring that Mr. L. exceeded his instructions, and paid a higher price than he should have done. The referees considered, from the correspondence, that no positive instructions, although strong and expostulatory advice, had been given by M. & T. to Mr. L., and that the matter was still left to the exercise of his judgment, and reported in his favor, making M. & T. jointly liable. Motion is made to set the report aside. The Court considers that merchants and others are bound, when making a counter order, to do so in clear and unequivocal language. Motion to set aside report denied.

*Hoyt's Letters—Case of McKenzie.* In an article entitled "the Law and the Press," the New York Tribune thus speaks of this case:

Some years ago, William L. Mackenzie gave to the public the contents of a certain trunk or trunks of old letters, mainly addressed to Jesse Hoyt, and by Hoyt placed in said trunks, and thus left in one of the upper chambers of the Custom-House, on his sudden exit from the Collectorship. Through the innocent agency of some third person, these letters became mixed up with papers of a different character, which Mr. Mackenzie, then a subordinate in the Custom-House, was required to overhaul, classify, and file away for future reference, and thus he became acquainted with their contents. In reading them, curiosity gradually gave place to astonishment and indignation, and he resolved to resign his place in the Customs, and give publicity to the letters thus placed in his power. He did so. The letters were printed in in a compact, well edited volume; Mr. M.'s name appearing in full on the title-page. He remained within easy call of all interested; and repeated attempts were

made to indict him, but with uniform ill success. An application to the Vice Chancellor, however, resulted in an injunction utterly forbidding the publication or sale of the work in question, and even the paying over, by those who had purchased copies to sell, of any part of the proceeds to the author and his representatives. Thus the book has remained under the ban of the law ever since it was fairly published.

The Vice Chancellor's decision was appealed from, and the appeal heard before Chancellor Walworth some two and a half years ago. But no decision was had upon it; nothing distinctly heard from it. At last, eight days before his office becomes extinct, Chancellor Walworth gives a decision, reversing that of the Court below, pronouncing the claim of Hoyt to the proceeds of the book unfounded, and ordering a full restitution to Mackenzie, both of the book and its proceeds, with costs.

*Codification—the Law Reporter.* The August number of that excellent periodical, the Law Reporter, in a very sensible leading article, breaks ground in favor of Codification. We congratulate the friends of Law Reform upon this accession to their strength.

*Cambridge Law School.* We regret to learn that Professor Greenleaf has been compelled, by ill health, to resign the Dane Professorship. We have learned to look to him as one of the bright and pure lights of American jurisprudence. His successor is Theophilus Parsons, of Boston, of whom we have heard, that he worthily wears the mantle as well as the name of his illustrious father.

*Note made to order of Cashier.* In the case of the Bank of the United States *v.* Lyman, in the Circuit Court of the United States for Vermont, May term. 1848, (1 Law Reporter, N. S. 156, it is held, that "if a note is payable to S. J., Cashier, or order, &c. parol evidence is inadmissible to prove that the Bank of which S. J. is Cashier, was the real party in interest; and such a note is not evidence in an action for money had and received, or of an account stated, brought in the name of the Bank."

*Gordon's Digest.* We have before us a new edition of this very convenient and valuable Digest, bringing down the Laws of the United States to the end of the 29th Congress, 1847. It is in one volume of 1176 pages, published by Thomas, Cowperthwaite & Co., Philadelphia, and may be purchased of J. F. Desilver, of Cincinnati. We regard it as the cheapest and most convenient embodiment of the Acts of Congress now in force, within reach of the profession.

*Contempt—Power of U. S. Senate to punish.* [Circuit Court, City of Washington.] Chief Justice Cranch delivered the opinion of the Court in the case of Nugent, the Reporter of the New York Herald, affirming the power of the United States Senate to commit and imprison for a contempt of its authority, and declaring the case of Nugent to be beyond the jurisdiction of the Court. The opinion was a very able and elaborate one.

*Lien Law of New York.* [Court of Common Pleas, before Judges Ulshoeffer, Ingraham and Daly. Baxter *v.* Reed.] Action by lumber merchant, under the lien law, to recover $419 for timber and joists furnished in the erection of three brick buildings. Verdict was given for plaintiff in the amount, subject to the opinion of the Court. The Court said the points raised in this case have been decided in this Court:

1. A man who sells lumber, and carts it to a building, is not entitled to a lien unless he does work upon the building as a mechanic or workman.

2. Cutting the timber to the required length when it is sold, is no more doing work upon it than cutting cloth from a piece is doing work upon it in the manufacture.

An omission to contest a claim does not make the owner liable, if the papers are insufficient to create a lien under the Statute. New trial ordered.

*Patent Laws of all Nations.* Under the title of "Laws and Practice of all Nations and Governments relating to Patents for Inventions." Messrs. Kingsley and Pierson, of New York, Patent Agents, have published a 200 page octavo, containing the rules and proceedings relative to patents in England and her Colonies, France, Holland, Austria, Russia, Prussia, Rome, Spain, Cuba, and the United States, &c., with tables of fees and forms, and explanations of the various operations necessary in procuring patents throughout the world.

The compilers lay this claim to originality in their work, that it is "the first book ever undertaken, where all the patent laws now in force, of all governments of the world, have been presented." They have arranged the statutes or rules carefully, with suitable marginal readings, titles, and an index.

*Careless Driving.* Rapid and careless driving meets with proper check in some places. The St. Louis Republican says: "Yesterday, in the Criminal Court, Henry Kraymar, the driver of an omnibus, was found guilty upon a charge of an assault with intent to kill the child of Mr. T. Cavanaugh, by driving an omnibus over his body while lying in the street. He was fined $100, and sentenced to three months' imprisonment in the Penitentiary."

*Law Phraseology.* The verbose technicalities of legal phraseology, are well hit off in the following:

If a man would, according to law, give to another an orange, instead of saying, "I give you that orange," which one would think would be what is called in legal phraseology, "an absolute conveyance of all right and title therein," the phrase would run thus:

"I give you all and singular my estate and interest, right, title, and claim, and advantage of and in that orange, with all its rind, skin, juice, pulp, and pips, and all right and advantage therein, with full power to bite, cut, suck, and otherwise eat the same, or give the same away, as fully and effectually as I, said A B, am now entitled to bite, cut, suck, or otherwise eat the same orange, or give the same away with or without its rind, juice, pulp, and pips, any thing heretofore, or hereafter, or in any other deed or deeds, instrument or instruments, of what nature or kind so ever, to the contrary in anywise notwithstanding."

*Law Periodicals.* We have omitted to notice certain changes which have taken place in this department of American literature.

In May last, the Law Reporter, edited by Stephen H. Phillips, of Boston, commenced a new series, under the name of "The Monthly Law Reporter." Present Publishers, Charles C. Little and James Brown, of Boston, John S. Voorhees, of New York, and H. W. Derby & Co., of Cincinnati. This change was the commencement of the eleventh volume.

In July last, the Pennsylvania Law Journal, commenced a new series, under the name of "The American Law Journal," edited by "an association of gentlemen learned in the law." The first number of the new series was the ninth number of

the seventh volume of the old series. Publishers, Thomas, Cowperthwaite & Co., of Philadelphia, and Hammersly & Co., of Lancaster, Pa.

In July last, appeared in New York, the first number of a new monthly law periodical, entitled "The Code Reporter, a Journal for the Judge, the Lawyer, and the Legislator." Publisher, John Townshend, 3 Nassau street, New York. We have borrowed fro its columns in the present number, and are happy to have it on our exchange list.

*Cincinnati Law School.* It gives us great pleasure to learn, that this institution, under the management of its learned and indefatigable Professors, is constantly growing in reputation and usefulness. Though not requested, we insert their Circular for the next term:

CIRCULAR OF THE LAW DEPARTMENT OF THE CINCINNATI COLLEGE. The next term of the Law Department of the Cincinnati College, will commence on the first Monday of November next, and will close on the last Thursday of March, 1849.

The course of instruction will embrace all the leading Titles and Subjects of Common and Statute Law, and of Equity, and is designed to prepare Students for the Practice.

There will be two exercises daily, during the term, consisting in part of Lectures, but chiefly of Recitations in the various Text Books, which are embraced in the Course.

A Moot Court will be held once a week, in which Students will be required to prepare Pleadings, furnish written Briefs, and make Oral Arguments.

The following Text-Books will be used: Blackstone's Commentaries, Walker's Introduction, Chitty on Contracts, Gould on Pleading, Greenleaf on Evidence, (1st volume,) Bolcombe's Introduction to Equity, and Smith's Mercantile Law.

The Tuition fee is $50.00; Graduation fee, $5.00.

The expenses of a Student in Cincinnati are about $2.50 per week.

Any additional information that may be desired in regard to the School will be cheerfully furnished on application to either of the Professors.

W. S. GROESBECK,
CHAS. L. TELFORD,
Professors.

Cincinnati, August 15, 1848.

## PUBLISHER'S CIRCULAR.

With this number closes the fifth volume of the Western Law Journal; and the Publisher, while he has the satisfaction of acknowledging a more prosperous state of affairs than heretofore, avails himself of the occasion to announce sundry changes to commence with the next number, which he hopes will not only meet with the approbation of his former subscribers, but render the work worthy of that increased patronage, which will enable him to make it all the profession can reasonably desire.

I. With the next number will commence a New Series of the Western Law Journal, to be conducted by an association of legal gentlemen, including the former resident Editors, and such others as increased facilities may enable him to engage.

II. In order to make it for the pecuniary interest of all practising lawyers to become subscribers, the names and residence of all subscribers will be published on the cover of each number, which will thus be made a substitute for an advertising card, without any additional charge. By this means, any subscriber, wishing to transact business in any other part of the country where there are subscribers, may, without trouble, know whom to address.

III. A persevering effort will be made to exhibit the differences prevailing in the different States upon some of the most important matters of practical legislation. It will be remembered, that in August, 1844, (1 West. L. Jour. 521,) a circular was published, containing eighteen questions, with a view to effect this object. Answers were received and published, from the twelve following States, viz.: Ohio, Indiana, Illinois, Michigan, Iowa, Louisiana, Maryland, Massachusetts, New Hampshire, Mississippi, North Carolina, and Tennessee. Every effort was made, short of the offer of pecuniary compensation, to obtain answers from all the States, but without success. The Publisher is now resolved to resume his efforts, and by adding new inducements, hopes to make this exhibit complete. When this shall have been accomplished, all the answers will be published together in one or more consecutive numbers, which will be sent to all persons who shall have furnished answers. They shall also receive the Journal two years free of charge. The Questions are here subjoined, and an earnest appeal made to the profession to furnish answers at an early day.

1. Are aliens permitted, in your State, to hold real estate?
2. What period of residence in the State is necessary to entitle a citizen to vote?
3. Is the age of majority the same for males and females, and what is it?
4. What are the requisites of a valid marriage?
5. For what causes may married persons be divorced, and by what tribunal?
6. Are foreign Corporations permitted to establish agencies in your State?
7. Have you a law for limited partnerships? and what are its leading features?
8. What is the legal rate of interest, and what is the consequence of contracting for more?
9. Do you allow imprisonment for debt, and under what circumstances?
10. Have you a bankrupt, or insolvent law, and what are its leading features?
11. What are the damages on protested bills of exchange?
12. Have you any State legislation on the subject of insurance, and what is it?
13. Have you altered the general law governing negotiable paper, and in what particulars?
14. Have you an attachment law, and what are its leading features?
15. What are the requisites of a valid deed for the conveyance of land in your State? And will a deed made elsewhere, without these requisites, be good?
16. Please answer a similar question with respect to a will.
17. Does your law allow foreign executors, administrators, or guardians to act in your State in relation to property situated there?
18. What are the requisites for admission to your bar, and have you any law regulating attorneys' fees?

Respectfully,

J. F. DESILVER.